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March 18, 2024

Via ECF

District Judge Hon. Denise L. Cote
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 18B
New York, New York 10007

Re: *Albright v. Daily Harvest, Inc., et al.* Civil Action No.: 22-cv-05987

Dear Judge Cote,

We represent Smirk's Ltd. ("Smirk's") herein. We are writing in brief reply to Daily Harvest's March 17, 2024 letter.

To be clear, the initial demands served by Smirk's on February 10, 2023 requested all "statements" pertaining to the subject matter of this litigation. Clearly, deposition testimony centered around tara flour is responsive to this request. Daily Harvest had these deposition transcripts since November and December of 2023. Of course, serving these transcripts at the last minute, days before the deposition of Daily Harvest's representatives is highly prejudicial as it prevents Smirk's from a full and fair review of the depositions and documents. While Daily Harvest claims 372 of 717 pages of these documents were "new" Smirk's is still forced to review all these documents to determine the accuracy of these statements. Moreover, this testimony makes it clear that several other Daily Harvest witnesses will need to be noticed. Based upon the current deposition schedule (a deposition on March 19, 2024 in NYC, a deposition on March 21, 2024 in NYC, a deposition on March 22, 2024 in California, a deposition on March 25, 2024 in Colorado, two Zoom depositions for Peruvian witnesses on April 2 and 3, and depositions on April 9, 2024 in NYC, and April 11th and 12th in Colorado) the timeline to properly notice and prepare for additional deposition further prejudices Smirk's.

Finally, as stated in my email to Daily Harvest counsel, the video referenced by Daily Harvest was a link in an email that was turned over to Daily Harvest in July of 2023. (See **Ex. B** to Smirk's March 15, 2024 letter.) On February 21, 2024 Daily Harvest asked the video could be produced in its native form as it could not be opened. Smirk's counsel advised that we could not open the link, but we would reach out to our e-discovery provider. Our e-discovery provider then confirmed that they could not view the video in any form. As a result, we then went back to Smirk's and asked that they get their IT provider to attempt to re-pull the video so it could be provided in a version that could be watched by all. Smirk's counsel received the video on

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Wednesday, March 13, 2024 and then sent it to all counsel before the end of day Thursday, March 14, 2024.

Finally, as to the supplemental production of March 12, 2024, Smirk's provided the text messages of Dean Schoier, who is scheduled to be deposited on March 22, 2024. Cell phones were not included in the ESI protocol. Nevertheless, the deposition notices have been asking for records that a witness reviewed before their deposition. As such, Smirk's counsel has been turning over any documents that a witness reviews prior to the deposition. When Smirk's counsel was advised by Dean that he reviewed text messages, counsel immediately had the text messages pulled from his phone and provided to all parties.

As such, Smirk's requests Daily Harvest be ordered to provide all additional discovery within ten (10) days and for all current deadlines be extended an additional 30 days to allow Smirk's to review these new materials, identify new witnesses and serve additional deposition notices.

Thank you very much for your Honor's time and attention to this matter.

Respectfully Submitted,

s/ Jennifer Bruder

Jennifer Bruder

Haworth Barber & Gerstman, LLC

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